

61

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



NOV 22 2004

FILE:



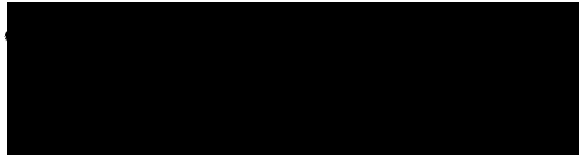
Office: HOUSTON

Date:

IN RE:

Obligor:

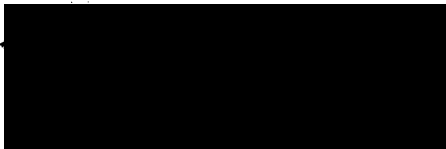
Bonded Alien:



IMMIGRATION BOND:

Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office, Director, Detention and Removal, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on October 22, 2001, the obligor posted a \$4,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 16, 2004, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of Immigration and Customs Enforcement (ICE) at 9:00 a.m. on February 26, 2004, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On March 18, 2004, the field office director informed the obligor that the delivery bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on March 18, 2004. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. Although counsel dated the appeal April 9, 2004 it was received by ICE on April 22, 2004, or 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The field office director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.